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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/349,132	01/12/2012	Stephen Allpress	326903US	3501

102469 7590 01/30/2017

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ART UNIT	PAPER NUMBER
2631	

NOTIFICATION DATE	DELIVERY MODE
01/30/2017	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHEN ALLPRESS, EDWARD ANDREWS, SIMON HUCKETT, LAOLU LIJOFI, JONATHAN PETER LUCAS, CARLO LUSCHI, and SIMON NICHOLAS WALKER

Appeal 2016-005769
Application 13/349,132
Technology Center 2600

Before BRUCE R. WINSOR, LINZY T. McCARTNEY, and NATHAN A. ENGELS, *Administrative Patent Judges*.

PER CURIAM.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

The Claims

Independent claim 1, copied below, is illustrative of the subject matter on appeal:

> 1. A method of processing an input signal received over a channel of a wireless network at an apparatus comprising a plurality of receiver processing means, each receiver processing means being for processing the input signal to generate an output signal in which an effect of the channel on the received input signal is diminished, the method comprising:
>
> repeatedly selecting, one receiver processing means at a time, each one of the plurality of receiver processing means to perform said processing of the input signal for a respective time interval thereby generating a plurality of output signals, wherein said repeatedly selecting each one of the plurality of receiver processing means includes selecting a previously unselected receiver processing means;
>
> comparing a respective quality measure of each of the plurality of output signals; and
>
> controlling the respective time intervals of the plurality of receiver processing means in dependence upon said comparison of the quality measures of the output signals, such that the respective time interval for one of the receiver processing means which generates the output signal having the quality measure indicating the highest quality is longer than the respective time intervals of the other receiver processing means.

App. Br. 14 (Claims App'x).

The Examiner's Rejections

Claims 1–22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Yeo[1] and one or more of Luschi,[2] Ban,[3] Nakayama,[4] Kent,[5] Horibe,[6] and Drugge.[7] *See* Final Act. 3–21.

ANALYSIS

Appellants contend the Examiner erred in finding that Yeo teaches or suggests "said repeatedly selecting each one of the plurality of receiver processing means includes selecting a previously unselected receiver processing means," as recited in claim 1. Specifically, Appellants argue the cited disclosures of Yeo do not teach "selecting a previously unselected receiver processing means," but instead merely teach selecting an optimal receiver processing means based on various channel parameters of a previously selected receiver processing means. *See* Br. 8.

The Examiner finds that Yeo teaches this limitation with its disclosures of (1) initially selecting either a rake receiver or an equalizer receiver at power-on (the initial start-up state) and (2) after a specific time interval, selecting the other receiver (which was previously unselected at power-on) as the optimal receiver based on Signal to Noise Ratio , Doppler Frequency, or modulation of received signal. *See* Ans. 3 (citing Yeo Figs. 1,

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[1] Yeo et al. (US 2010/0303141 A1; published Dec. 2, 2010) ("Yeo").
[2] Luschi et al. (US 2009/0110036 A1; published Apr. 30, 2009) ("Luschi").
[3] Ban et al. (US 2010/0142609 A1; published June 10, 2010) ("Ban").
[4] Nakayama et al. (US 2010/0226465 A1; published Sept. 9, 2010) ("Nakayama").
[5] Kent et al. (US 2006/0072691 A1; published Apr. 6, 2006) ("Kent").
[6] Horibe et al. (US 2005/0180298 A1; published Aug. 18, 2005) ("Horibe").
[7] Drugge et al. (US 2011/0002283 A1; published Jan. 6, 2011) ("Drugge").

3; ¶¶ 6, 14–16, 31, 58, 59, 61, 63); Final Act. 4. Appellants do not substantively dispute the Examiner's findings of fact regarding the operations disclosed in Yeo. In fact, Appellants acknowledge that "it is possible that an optimal receiver may happen to be the previously unselected receiver processing means at some point in time," but Appellants argue that "is not necessarily the case" and the Examiner's rejection relies on "mere probabilities and possibilities." Br. 8 (quoting MPEP § 2121 regarding inherency).

Contrary to Appellants' arguments, the Examiner's rejection does not rely on probabilities, possibilities, or the doctrine of inherency. The Examiner finds, and we agree, Yeo *expressly* teaches the disputed limitation with the disclosure of selecting a receiver upon powering-on and thereafter, changing from the initially selected receiver to the *initially unselected* receiver. *See* Ans. 3 (citing Yeo Fig. 3, ¶¶ 61, 63); Final Act. 4. Indeed, the Examiner finds, and Appellants acknowledge, that normal operation of Yeo's apparatus would satisfy the disputed limitation "at some point in time" (Br. 8), for example, the first time Yeo's two-receiver apparatus switches from the initially selected receiver to the other, previously unselected receiver (*see* Ans. 3–4). The Examiner's findings are consistent with the claim's plain language read in light of Appellants' Specification, which describes a two-receiver embodiment like that of Yeo. *See* Spec. ¶ 21 ("In some embodiments, there are only two receiver processing means implemented in the apparatus, i.e. a first receiver processing means and a second receiver processing means. In these embodiments, the two receiver processing means may be alternately selected for respective first and second time intervals.").

Even if, as Appellants acknowledge, the cited prior art only meets all of the elements of claim 1 at some point in time, "combinations of prior art that sometimes meet the claim elements are sufficient to show obviousness." *Unwired Planet, LLC v. Google Inc.*, 841 F.3d 995, 1002 (Fed. Cir. 2016); *accord Hewlett-Packard Co. v. Mustek Sys., Inc.*, 340 F.3d 1314, 1326 (Fed. Cir. 2003) ("[A] prior art product that sometimes, but not always, embodies a claimed method nonetheless teaches that aspect of the invention."); *see also Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 622–623 (Fed. Cir. 1995) ("[A]n accused product that sometimes, but not always, embodies a claimed method nonetheless infringes."). Accordingly, we disagree with Appellants' arguments that the Examiner erred in the rejection of claim 1.

We agree with and adopt as our own the Examiner's findings, conclusions, and reasoning for the rejection of claim 1, consistent with the analysis above. *See* Final Act. 3–6; Ans. 2–3. We sustain the Examiner's rejection of claim 1, as well as the rejections of independent claims 16, 21, and 22, and dependent claims 2–15 and 17–20, which were not argued separately with particularity beyond the arguments advanced for claim 1. *See* Br. 8–12.

DECISION

The decision of the Examiner to reject claims 1–22 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).
See 37 C.F.R. §§ 41.50(f), 41.52(b).

AFFIRMED